APR 10 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 74-1155

PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE and JAMES F. MORRILL,

Petitioners,

vs.

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of Continental Steel Corporation similarly situated,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS

LEON SILVERMAN
Attorney for Petitioners
120 Broadway
New York, New York 10005

MARC P. CHERNO
JOSEPH H. EINSTEIN
ALAN J. RUSSO
of Counsel

IN THE

Supreme Court of the United States

No. 74-1155

PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE and JAMES F. MORRILL,

Petitioners,

VS.

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of Continental Steel Corporation similarly situated,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS

Respondent necessarily concedes that the proxy rules causation issue expressly left open by this Court in *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375 (1970), "is of academic interest" (p. 5).* We submit, however, that the interest in this issue is far more than "academic," since it is central to a substantial number of the proxy rules cases now pending before the courts.

Respondent also concedes that the present decision has, for the first time, "rejected out of hand, the imposition

* References in parentheses are to the Brief of Respondent in Opposition.

of a 'but for' causation standard to private rights of action brought pursuant to the Proxy Rules" (p. 15);* departed from "common law tort standard[s]" of causation (p. 16); and eliminated the "requirement that the damaged minority shareholder be volitionally involved in his injury (such as in common law fraud)" (pp. 18-19).

We naturally differ with Respondent as to whether this departure from common law standards is desirable or even constitutional. But, irrespective of the merits, it cannot be gainsaid that it is of critical importance in the development of the securities laws, and, therefore, should be reviewed by this Court.

Respectfully submitted,

LEON SILVERMAN
Attorney for Petitioners
120 Broadway
New York, New York 10005

MARC P. CHERNO
JOSEPH H. EINSTEIN
ALAN J. RUSSO
of Counsel

April 14, 1975

---

* Contrary to respondent's contention (pp. 15-16), it was pointed out by Judge Mansfield that this Court's decision in *J. I. Case Co.* v. *Borak*, 337 U.S. 426 (1964), "required that plaintiff demonstrate 'but for' causation, *i.e.*, that the corporate action would not have occurred in the absence of the alleged violation of the proxy rules." *Kaminsky* v. *Abrams*, 281 F. Supp. 501, 506 (S.D.N.Y. 1968).